

**REGULAR MONTHLY MEETING OF THE STEPHENS CITY TOWN COUNCIL**  
**TUESDAY, September 1, 2009**  
**7:30 p.m.**

Mayor Ray Ewing called the meeting to order at 7:30 p.m. and led the Pledge of Allegiance.

Council member Harter led those present in the Lord's Prayer.

Roll call showed the following present:

Vice Mayor Joy Shull, Council member Ronald Bowers; Council member Linden A.

Fravel, Jr., Council member Michael Grim, Council member James Harter.

Absent: Council member Joseph Hollis

Staff present: Mike Kehoe, Town Manager; Brian Henshaw, Town Planner; David Griffin, Town Attorney; Kim Uttenweiler, Town Treasurer; Dianne MacMillan, Town Clerk; Charles Bockey, Police Chief; Ron Fox, Police Officer

Press: Cynthia Burton, Winchester Star

Guests: Lou Ann Thompson, Robin Bentley, Joe Hickman – Sherando Warrior Club

**AGENDA**

Mayor Ewing asked that the Agenda be amended to add an action item the approval for consultant for North Main Street enhancement project. Vice Mayor Shull moved that the Agenda with the addition of the action item mentioned be adopted as amended and the motion passed.

**PUBLIC COMMENTS**

Mr. Joe Hickman 7960 Main Street, representing the Sherando Warrior Club addressed Council asking that it once again approve the Sherando homecoming events October 21<sup>st</sup> through October 24<sup>th</sup>, including the homecoming parade and bonfire. He said there had been nothing but positive feedback on the previous homecoming events and that the Warrior Club would do whatever was necessary to make the homecoming successful. Mr. Hickman also asked council to join in proclaiming the week of Oct 19 as Sherando Spirit Week and extended an invitation to Mayor Ewing to be the honored guest at the home game to publicly make the declaration.

**PUBLIC HEARINGS**

**A. Town Code Chapter 12 Noise – Repeal and Re-enact and Chapter 1, definitions**

Mayor Ewing introduced the public hearing for repeal and re-enactment of Chapter 12, Noise. Dave Griffin explained that these changes were a result of the Virginia Supreme Court addressing existing language found in most municipalities' codes and the changes were made to comply with the directives as set down by the state. The Mayor called for questions or comments from Council and the public. There being none, the public hearing was closed.

## **B. Special Use Permit – Southern States – 5782 Valley Pike**

Mayor Ewing asked Mr. Henshaw, Town Planner, for some background on the request. Mr. Henshaw advised that the request was for Southern States to allow them to sell LP gas wholesale and farm supplies. He added that this was in conjunction with their expansion of the current facilities. He explained that Southern States was expanding into the land behind the existing location to property in I1 District requiring a special use permit to sell LP gas at wholesale. He said they already have this option at the current location. Mayor Ewing called for comments and questions. There were none and the public hearing was closed.

## **MINUTES – August 4, 2009 Regular Meeting**

Council member Fravel moved for approval of the minutes of August 4, 2009 as presented and the motion carried with the following vote:

### **Recorded Vote:**

Vice Mayor Shull	-	Aye	Nays - None
Council member Bowers	-	Aye	
Council member Fravel	-	Aye	Abstain - None
Council member Grim	-	Aye	
Council member Harter	-	Aye	
Absent – Council member Hollis			

## **TREASURERS REPORT**

The Mayor reported there was no written report and requested a report from the Treasurer. Town Treasurer, Kim Uttenweiler reported that the cash position in the operating accounts stood at \$ 464,353.24 so the town was liquid. The Treasurer's report was accepted as reported.

## **POLICE REPORT**

The Mayor asked for questions or comments regarding the police report. There being none, the Police Report was accepted as presented.

## **ACTION AGENDA**

### **A. Adoption of Town Code – Chapter 12 – Noise - Repeal and Re-enact and Amend Chapter 1, to Add Definitions Pertaining to Noise.**

Mayor Ewing presented the first item for action as repeal and re-enact Chapter 12 and amend Chapter 1 to add definitions pertaining to noise.

Council member Grim moved that Chapter 12, Noise ordinance as presented be amended to omit the word "whereas" from the beginning of each of the four paragraph in Article I, Section 12-1. The motion passed with the following recorded vote:

Recorded Vote:

Vice Mayor Shull	-	Aye	Nays - None
Council member Bowers	-	Aye	
Council member Fravel	-	Aye	Abstain - None
Council member Grim	-	Aye	
Council member Harter	-	Aye	

Absent – Council member Hollis

Mayor Ewing requested that the Clerk read the ordinance by title only for first reading. The Clerk read “An Ordinance to Repeal and Re-enact Town Code Chapter 12 and add additional definitions to Chapter 1, both pertaining to Noise.” Council member Grim moved to repeal and re-enact Chapter 12, Noise and amend Chapter 1 to add definitions on the first reading and the motion passed.

Mayor Ewing requested that the Clerk read the ordinance by title only for second reading. The Clerk read “An Ordinance to Repeal and Re-enact Town Code Chapter 12 and add additional definitions to Chapter 1, both pertaining to Noise.” Council member Fravel moved to repeal and re-enact Chapter 12, Noise and amend Chapter 1 to add definitions on the second and final reading and the motion passed.

Recorded Vote:

Vice Mayor Shull	-	Aye	Nays - None
Council member Bowers	-	Aye	
Council member Fravel	-	Aye	Abstain - None
Council member Grim	-	Aye	
Council member Harter	-	Aye	

Absent – Council member Hollis

**B. Approval of Special Use Permit – Southern States – 5782 Valley Pike**

Mayor Ewing introduced the Special Use Permit for Southern States and asked for questions or comments. Mr. Kehoe asked if council had reviewed the engineers’ comments addressing requirements for an adequate pressurized fire system. He said that it may be addressed in the site plan but suggested tabling any action for further review to determine fire suppression needs. He added that there were no plans for water supply there currently. Mr. Henshaw pointed out that that was addressed in the conditions of the special use permit where fire prevention was added as a condition of site plan approval. He added that it was discussed administratively and Southern States would need to have to all approvals for site plan including adequate fire suppression for the materials on the property. Mayor Ewing stated that the applicant was requesting approval of a special use permit contingent upon the appropriate safe guards. Mr. Henshaw explained that it would be easier to have the special use approved before beginning the site plan process. Mayor Ewing asked the Town Attorney if approval of a special use permit setting conditions on a site plan was sufficient. Mr. Griffith said it was entirely appropriate to put these conditions on a site plan. Mr. Kehoe said his concerns were allayed by the requirement of review by the fire marshall.

Council member Fravel moved that the Council of the Town of Stephens City approve the special use permit number SUP 09-02 contingent on recommendations and comments from staff including town planner comments, planning recommendations and town engineers comments consisting of the following conditions: 1) required Health Department approval for the septic system drainfield, 2) require connection to the Town water and sewer system within 60 days of its being available on the adjacent property to the north or within reasonable distance acknowledge d by the Town; 3) the Town will be authorized to intervene if the septic system fails in whole or in part with reimbursement from the owner due to the karst features knows within the area and within the short distance of the primary source of potable water for the Town and FCSA; 4) the Town’s Karst Ordinance will be reviewed and the appropriate documents provided to the Town; 4) all wetlands should be identified if any, quantified, mitigated and avoided if possible; 5) an adequate water supply be available on site for fire protection as to be determined by the Fire Marshall; and 6) the Planning Commission will further review the site plan, once submitted. The motion passed with the following recorded vote:

Recorded Vote:

Vice Mayor Shull	-	Aye	Nays - None
Council member Bowers	-	Aye	
Council member Fravel	-	Aye	Abstain - None
Council member Grim	-	Aye	
Council member Harter	-	Aye	

Absent – Council member Hollis

### **C. Approval of Sherando High School Homecoming Parade and Carnival**

Mayor Ewing asked Mr. Kehoe for background on the request from Sherando High School. Mr. Kehoe stated that this was the third year that the Warrior Club from Sherando asked for approval of a parade for Friday evening to start at 6:00 and to use the Newtown Commons for a carnival. He advised that comments received from VDOT indicated their concern traffic backups on Friday evening and they would have the final say on parade. He said he would submit the request to VDOT if Council approved the parade. Chief Bockey said Jerry Copp from VDOT was concerned the backup of traffic from the last parade down one ramp on the interstate and back to Warrior Drive. He added that there was also a worry about the foot traffic across the bridges. He said he would set a meeting with the Warrior Club, Frederick County police and VDOT to discuss the parade. Council member Fravel said that he noticed traffic dissipated quickly after the end of the parade last year. Chief Bockey added that due to budget cuts Frederick County was cutting back on police assistance for special events. Council member Grim said they should be reminded that Sherando is a county school.

Council member Grim moved to endorse the homecoming parade after approval by VDOT and allow Sherando High School to use the Newtown Commons for its pep rally and carnival in October. The motion was passed with the following recorded vote:

Recorded Vote:

Vice Mayor Shull	-	Aye	Nays - None
Council member Bowers	-	Aye	
Council member Fravel	-	Aye	Abstain - None
Council member Grim	-	Aye	
Council member Harter	-	Aye	

Absent – Council member Hollis

**D. Approval of Land Planning Design & Assoc for design of North Main Enhancement Project**

Mayor Ewing requested that Mr. Henshaw provide details about the project. Mr. Henshaw explained that Mr. Kehoe, Tim Stowe and he had evaluated six proposals received and out of those short listed three. He said they held interviews and chose a highly qualified consulting firm of Land Planning Designs and Associate, a landscape architect firm and were confident that this firm would yield a highly dynamic result. He emphasized the importance of creating a gateway into the town on the northern corridor. Mr. Henshaw said he wanted only to get approval to move ahead with this contractor. He added that VDOT would also need to review the contract.

Mayor Ewing asked the scope of the project. Mr. Henshaw said the project would go from Barley drive to the northern corporate line just past Shenandoah Valley Christian Academy. He said tentatively it would involve sidewalk extension and stormwater management. In the long term the proposed shared use ten foot wide hiking/biking trail and some other enhancements on the north end could be looked at. He said LPD&A could lead through the entire process since they have worked on enhancement grants in the past two years and are experienced working with VDOT. Mayor Ewing said his concern was that this firm might go into features that will make the project expensive. Mr. Henshaw said the project will be phased and will be subject to review at all phases. He said that with this firm, the entire design would be there for the future. After further discussion about costs which covered enhancement grants and proffers, Mayor Ewing noted that VDOT approval would take a few months which would push action to the end of calendar year. Mr. Henshaw said that the goal was to have the engineering ready to go by April of 2010. Mr. Kehoe also noted that the Town had two T21 projects that were phasing down and the town would be in good position for this as a projected project 2 to 3 years out. Mr. Henshaw said that the next step was that the firm would submit a fee proposal and then a contract could be signed. He noted that the Town would not be locked in – if the firm came back with a fee proposal that was too high, the town could go back to the next best firm. He said he was just requesting approval of this selection so they could proceed to the next step.

Vice Mayor Shull moved that the Town of Stephens City approve the selection of Land Planning Design and Associates to provide design and engineering services for the North Main Street Enhancement Project based on fee proposal reviews and VDOT approval. The motion passed with the following recorded vote:

**Recorded Vote:**

Vice Mayor Shull	-	Aye	Nays - None
Council member Bowers	-	Aye	
Council member Fravel	-	Aye	Abstain - None
Council member Grim	-	Aye	
Council member Harter	-	Aye	

Absent – Council member Hollis

## **COMMITTEE REPORTS**

### **A. Public Work Committee – Michael Grim, Chair**

Council member Grim said there no action required from the meeting of the Public Works Committee. He reported that the committee met with Mr. Trenary and Mr. Fleet from the Frederick County Dept of Inspections regarding the building maintenance ordinance. He said it was an informational meeting only. He also reported that the committee was continuing to receive bids for replacement of the railing on Main Street taken out by a fire truck and was checking sidewalks in order to revise the repair list.

### **B. Water/Sewer Committee – Joy Shull, Chair**

Vice Mayor Shull stated that the committee had previously approved modifying Section 22 of the Town Code concerning the availability of sewer to residences to bring it into agreement with the previous language. She asked the Town Attorney to prepare an ordinance amendment for the October meeting.

### **C. Finance Committee – Joseph Hollis, Chair**

Council member Harter, in the absence of the chairman, reported that the entire finance committee had been in attendance and were glad to report that the 2007-2008 Audit was complete and recommended that the Council accept the audit as presented. Council member Harter moved that the Council of the Town of Stephens City accept the 2007-2008 Audit submitted by Donald K. Price CPA PC as presented. The motion passed with the following recorded vote:

#### Recorded Vote:

Vice Mayor Shull	-	Aye	Nays - None
Council member Bowers	-	Aye	
Council member Fravel	-	Aye	Abstain - None
Council member Grim	-	Aye	
Council member Harter	-	Aye	
Absent – Council member Hollis			

## **PLANNER'S REPORT – Brian Henshaw**

Mr. Henshaw reported that the HPC met and reviewed their bylaws. He said that one member, Dave Edwards was having a difficult time making the meetings. It was suggested that Mr. Edwards be allowed to name an alternate from the Virginia Department of Historic Resources to serve in his place when scheduling conflicts arise. Mr. Henshaw said this person would most likely be Joanie Evans who is qualified to offer the same input as Mr. Edwards. He asked if Council responsible for appointing the members of the HPC, could authorize an alternate to attend in his place. Mayor Ewing asked if this would require an amendment to the ordinance. Mr. Griffin, Town Attorney stated that an alternate could be named on a temporary basis as the ordinance is written. Council member Grim said it should be noted that it should be a non-voting member because this committee has the authority to approve on its own without coming to Council. Since all members are appointed by Council the alternate could be a non-

voting member and serve only in an advisory capacity. Mr. Henshaw said that could be addressed in changes to the bylaws which would be approved by Council. Council member Fravel said he had no problem with Joanie Evans serving because she had received her degree in historic preservation, but if the alternate was designated by name and approved by Council that should address any concerns. Mr. Henshaw agreed that if HPC named an alternate for Mr. Edwards from his office, it should be specific. Council member Grim agreed that it would have to be a specific person named as alternate. Mayor Ewing said Council could address this when reviewing the revised bylaws,

Mr. Henshaw reported that the first Stephens City Business Expo would be held on the Newtown Commons on Saturday, September 26<sup>th</sup> and encouraged everyone to talk about it and spread the word. He said it would be held from 10:00 am to 3:00 pm and will be talked about on WINC. He added that it was a chance for local businesses to promote their businesses. He advised that there would be demonstrations, give-aways, a chili cook off and radio station WINC would have a booth with additional give-aways. He reported that he had sent out information to businesses within the town and hand delivered flyers to businesses outside town. He encouraged everyone to attend.

Council member Fravel asked about the problems with VDOT concerning the street striping. Mr. Henshaw said their issue was with the number of cross walks and making them ADA compliant. He said they were also concerned that the cross walks would deter the flow of traffic and they had to be convinced that putting them in would provide pedestrian with safe places to cross. He reported that they came to an agreement and had a contract. He advised that the contractor was waiting for a letter of credit. Mr. Kehoe said VDOT was also concerned that they would need to maintain the striping in the future. Council member Bowers stated that everyone wanted the cross walks to be visible enough so that vehicles would obey the law and yield to pedestrians in the crosswalk. Mr. Henshaw assured Council that the project was set go.

### **TOWN MANAGERS REPORT**

1. Mr. Kehoe reported that the Mulberry Street sidewalk project was completed except for a few punch list items. He said he was not sure what remained in the budget now but it appeared that it would result in no surplus for further enhancement projects. He said VDOT would come in and do an inspection and there might be some follow up work.
2. He reported on the Peter B. Stickley grant for the old school. He said the architect was submitting plans and specs to VDOT for window replacement and this would likely use all of the funds for that project. He said the town had been using proffer monies that were no longer coming in.
3. Mr. Kehoe stated he was continuing to address the railing replacement on Main Street. He said he would have additional estimates by Friday to take to the public works committee. He added that estimates would also include replacement of existing railings at other locations on Main Street.

4. Mr. Kehoe reminded the members that the VML conference deadline is next week. He said he would be attending and it would be held in Roanoke this year. He encouraged any other members to attend.

### **COUNCIL COMMENTS/CALENDAR**

There being no comments or questions, Mayor Ewing said the calendar would stand as published until changes were deemed necessary.

### **MOTION FOR CLOSED MEETING**

Date: September 1, 2009

Motion By: Vice Mayor Shull

Vice Mayor Shull moved that the Council of the Town of Stephens City enter Closed Session pursuant to Section 2.2-3711.A.7 of the Code of Virginia, 1950, As Amended, to discuss the lawsuit filed by Frederick County against its citizens in the Town of Stephens City, such a closed meeting being necessary where consultation and briefing in an open meeting would adversely affect the litigating posture of the public body as well as to discuss potential litigation which may be filed by the Town against other bodies for violations of Virginia law, court orders and breach of contract, where consultation with counsel on such probable litigation in an open meeting would adversely affect the litigating posture of the public body.

VOTE:

Aye – Vice Mayor Shull  
Council member Bowers  
Council member Fravel

Council member Grim  
Council member Harter

Nay – None

Absent – Council member Hollis

ATTEST: \_\_\_\_\_  
Dianne L. MacMillan, CMC  
Town Clerk

Council member Hollis moved that the Council reconvene in open session. The motion passed with the following recorded vote:

Recorded Vote:

Vice Mayor Shull	-	Aye	Nays - None
Council member Bowers	-	Aye	Absent – Council member Hollis
Council member Fravel	-	Aye	
Councilmember Grim	-	Aye	Abstain - None
Council member Harter	-	Aye	



**CERTIFICATION OF CLOSED MEETING**

**RESOLUTION**

Date: September 1, 2009

Motion By: Vice Mayor Shull

WHEREAS, the Council of the Town of Stephens City, Virginia has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by this Council that such Closed Meeting was conducted in conformity with Virginia law,

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Council.

RECORDED ROLL CALL VOTE:

Aye – Mayor Ewing	Vice Mayor Shull
Council member Bowers	Council member Fravel
Council member Grim	Council member Harter

Nay – None

Absent – Council member Hollis

Abstain – None

ATTEST:

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Dianne L. MacMillan, CMC, Town Clerk

There being no further business, Council member Grim moved to adjourn at 8:35 p.m. and the motion carried.

\_\_\_\_\_  
Ray E. Ewing, Mayor Ray Ewing

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Dianne L. MacMillan, CMC, Town Clerk